

Items such as sleep apnea monitors for example do not qualify for the 1% rate of tax because these items do not directly substitute for a malfunctioning part of the body. See 86 Ill. Admin. Code 130.310(c). (This is a GIL.)

May 22, 2007

Dear Xxxxx:

This letter is in response to your letter dated June 26, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are contemplating starting up a new DME(Durable Medical Equipment) company in the state of Illinois. We will be supplying patients, through a doctor's prescription, with equipment for individuals who need a machine to help them sleep. Most of the billing will be directly through insurance companies, with some being paid directly by the patient. We do not know what our Sales & Use tax obligations are.

- 1) Are we obligated to collect & remit sales tax from insurance companies?
- 2) Are we obligated to collect & remit sales tax from patients who pay directly to us?
- 3) Are there any other tax issues we have not addressed above?

These issues are important for us to make a [sic] educated decision as far as starting up a company in the state of Illinois. We appreciate your prompt attention to our questions. Thank you in advance.

## DEPARTMENT'S RESPONSE

## **Retailers' Occupation Tax/Local Taxes**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101.

For general information regarding local taxes, please see 86 Ill. Adm. Code 220.115 of the Home Rule County Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various sales-tax-related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. If a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 220.115. Conversely, if a purchase order is accepted in a jurisdiction that does not impose a local tax, including anywhere outside Illinois, no local tax will be incurred.

## **Medicines and Medical Appliances**

Medicines and medical appliances are not taxed at the State rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities. A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate. In general, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. Some of the products specifically listed in the regulation as qualifying for the reduced rate are home glucose monitors, home blood glucose test strips and related supplies used to treat human diabetes.

We not have enough information to determine whether or not the sleep equipment you plan to sell qualifies for the low rate of tax; however, items such as sleep apnea monitors for example do not qualify because these items do not directly substitute for a malfunctioning part of the body.

## **Medical Payments**

Sales made to Medicare and Medicaid are exempt from tax as sales to a government body so long as the exemption is properly documented through provision of an active exemption identification number. See 86 Ill. Adm. Code 130.2080(a). This rule applies to all servicemen. While no tax may be due on payments made directly to vendors by Medicare or Medicaid, tax is due upon any portions of bills paid by individuals or private insurance companies not covered by Medicare and Medicaid. This means when Medicare directly pays 80% of the medical bill and the remaining 20% is billed to the patient or his insurance company, assuming proper documentation of the exemption, the 80% is tax exempt as a governmental payment while the 20% is taxable.

Some health care organizations (e.g. hospitals) that make application to the Department are determined to be exclusively organized and operated for charitable purposes. These organizations receive a tax exemption identification number ("E" number). Organizations that have secured tax exemption identification numbers from the Department are exempt from Use Tax when purchasing

tangible personal property for use in furtherance of organizational purposes, and retailers do not incur Retailers' Occupation Tax on such sales. See 86 Ill. Adm. Code 130.2005 and 130.2007.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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